



PepsiCo Patents Revocation for Potato Variety

For Prelims: Protection of Plant Varieties and Farmers' Rights Authority, FL 2027 Potato Variety

For Mains: Role and functions of the PPVFRA, Regulations governing intellectual property protection

[Source: IE](#)

Why in News?

The Delhi High Court recently upheld the decision made by **Protection of Plant Varieties and Farmers' Rights Authority (PPVFRA)** regarding the revocation of PepsiCo India's [intellectual property protection](#) for a **potato variety (FL 2027)**.

What is the FL 2027 Potato Variety Case About?

▪ About FL 2027 Variety:

- FL 2027 is a potato variety developed by **Robert W Hoopes** at Frito-Lay Agricultural Research. It is specifically bred for chip production by PepsiCo's Lay's brand.
- FL 2027 is an ideal potato variety for chip manufacturing due to its **high dry matter, low sugar content, and lower moisture content**.
 - These qualities **minimize dehydration and energy costs** during processing while reducing the risk of blackening when fried.

▪ Case:

- PepsiCo India Holdings was granted a **certificate of registration for FL 2027 as an "extant variety" on February 1, 2016** by PPVFRA.
 - It implied that during the **validity period, nobody else could commercially produce, sell, market, distribute, import or export it** without the breeder's authorization.
 - This period was **6 years from the date of registration and extendable up to 15 years**.
- However, PepsiCo in its 2012 application had sought the registration of FL 2027 as a **"new variety"** which due to failing to meet certain criteria was rejected.

Note:

▪ Criteria for a "new variety" of Plant:

- A **"new variety" has to conform to the criterion of novelty** - the propagated or harvested material from it should not have been sold in India earlier than one year before the date of filing the application for registration.
- FL 2027 variety could satisfy only the criteria of distinctiveness, uniformity and stability, but not novelty.

- **Reasons for the Registration Revocation:**
 - PepsiCo had also provided an **incorrect first date of commercialization of the variety (17 Dec 2009)**, when it was already commercialized in 2002 in Chile.
 - Hence, PPVFRA revoked the protection in December 2021 and rejected PepsiCo's application for renewal in February 2022. **It also made it clear that India's rules do not allow a patent on seed varieties.**
 - PepsiCo challenged PPVFRA's decision in the Delhi HC.
- **Ruling by the Delhi HC:**
 - The Delhi HC upheld the revocation of intellectual property protection faulting PepsiCo's application, stating that the company **wrongly applied for registration of FL 2027 as a "new variety" and provided incorrect information** regarding its first commercialisation date.

What is PPVFRA?

- The PPVFRA is an organization responsible for **safeguarding the rights of plant breeders and farmers in India.**
- It is an authority established under the [Protection of Plant Varieties and Farmers' Rights \(PPVFR\) Act, 2001.](#)
- The PPVFRA plays a crucial role in **granting intellectual property protection** to plant varieties and ensuring the rights of breeders and farmers are upheld.
- It reviews applications for plant variety registration, conducts examinations, and grants certificates of registration to eligible applicants.
- The authority also has the power to revoke or cancel the registration of plant varieties if deemed necessary.

What Other Foreign Companies in India have been Involved in Patent Infringement Issue?

- **Monsanto vs. Nuziveedu Seeds:** This case involved a patent infringement suit by Monsanto against Nuziveedu Seeds, an Indian seed company, for using its patented [Bt cotton technology](#) **without paying royalties.**
 - The Delhi HC granted an interim injunction in favour of Monsanto in 2016, directing Nuziveedu Seeds to pay royalties based on the percentage of the net selling price of its seeds.
 - The parties later settled the dispute through arbitration in 2017.
- **Novartis vs. Union of India:** This case involved a patent application by Novartis for its **anti-cancer drug Glivec**, which was rejected by the Indian Patent Office and the Intellectual Property Appellate Board on the grounds that it was **not a new invention, but only a modified form of an existing compound.**
 - The **Supreme Court of India** upheld the rejection in 2013, ruling that the **drug did not satisfy the criteria of novelty.**
- **Ericsson vs. Micromax:** This case involved a patent infringement suit by Ericsson against Micromax, an Indian mobile phone manufacturer, for using its standard essential patents (SEPs) related to 2G, 3G and 4G technologies without obtaining a license.
 - The Delhi HC granted an interim injunction in favour of Ericsson in 2013, directing Micromax to pay royalties based on the percentage of the net selling price of its devices.
 - The parties later settled the dispute through mediation in 2014.

